



National Consumers League

Founded 1899

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September 12, 1997

Office of the Secretary
Federal Communications Commission
1919 M Street NW, Room 222
Washington, DC 20554

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RE: Common Carrier Docket No. 94-129


Dear Sir/Madam:

The National Consumers League respectfully submits the enclosed comments in response to the Federal Communication Commission's Notice of Proposed Rulemaking issued on July 15, 1997 concerning further action to prevent "slamming." NCL is a private, nonprofit membership organization that has represented consumers in the marketplace and the workplace since its founding in 1899.

Because NCL has received a significant number of complaints concerning carrier switching through its National Fraud Information Center, it can provide insight from the consumer's perspective about the nature of unauthorized carrier switching and make suggestions for effective solutions to this problem. With the advent of local telephone service competition and the increase in long distance competition, it is imperative that the FCC act now to provide for both adequate consumer protection and potential benefits in the expanding telecommunications marketplace.

Sincerely yours,


Linda F. Golodner
President


Susan Grant
Vice President Public Policy

enclosure

cc: Cathy Seidel, FCC Common Carrier Bureau
Formal Complaints Branch, Enforcement Division, CCB, FCC
International Transcription Services, Inc.

Representing Consumers for 98 Years

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of:
Implementation of the Subscriber Carrier
Selection Changes Provision of the
Telecommunications Act of 1996

CC Docket No. 94-129

Policies and Rules Concerning
Unauthorized Changes of Consumers'
Long Distance Carriers

COMMENTS OF THE NATIONAL CONSUMERS LEAGUE

The National Consumers League files these comment in response to the Federal Communications Commission's Notice of Proposed Rulemaking issued on July 15, 1997 concerning further action to prevent "slamming," the unauthorized switching of consumers' telephone carriers. NCL is a private, nonprofit organization that has represented consumers in the marketplace and the workplace since its founding in 1899.

NCL's Role in Fighting Telephone-Related Fraud and Abuse

NCL has taken an active role in educating consumers and advocating for appropriate consumer protections concerning telephone-related fraud and abuse. In 1992, NCL created the National Fraud Information Center, a unique hotline service, 1-800-876-7060, which consumers can call for advice about telephone solicitations and report possible fraud and deception. The NFIC's services were expanded in 1996 with the launch of its web site, <http://www.fraud.org>, through which consumers can make inquiries and report telephone-related fraud.

Consumers' fraud reports are uploaded daily by the NFIC to the data base maintained by the Federal Trade Commission and the National Association of Attorneys General. The NFIC also relays selected fraud reports to over 160 individual federal, state and local law enforcement agencies, including the FCC.

NCL also coordinates the Alliance Against Fraud in Telemarketing, which is comprised of representatives from consumer groups, law enforcement and regulatory agencies, trade associations, telephone carriers, credit card companies, and other business interests. The AAFT conducts meetings and produces materials designed to educate its members and the public about telephone-related fraud, including unauthorized or misrepresented carrier switching. In addition, NCL works with the media, and in partnership with other groups, to raise public awareness about the benefits of telephone competition and deceptive practices of which to be wary.

Complaints about Carrier Switching Reported to the NFIC

Increasing Number of Complaints

Consumers can report telephone-related fraud to the NFIC by calling its toll-free hotline, using its online reporting form, by e-mail, or by writing. Over the first six months of 1997, NFIC statistics demonstrate an alarming increase in carrier switching complaints:

<u>Month</u>	<u># Carrier Switching Reports</u>
January	24
February	21
March	10 (NFIC was closed for three weeks for computer upgrade)
April	35

May 55

June 76

Nature of Carrier Switching Complaints

By July of 1997, carrier switching ranked as the sixth most frequent subject of complaint to the NFIC. Of the 221 complaints received from January through June, 24 were situations in which consumers agreed to switch their service based on alleged false promises of lower rates or other incentives that were never delivered. Most of those incidents involved major, well-known long distance carriers.

However, in the vast majority of the fraud reports made to the NFIC, consumers complained that they never authorized their service to be switched. Most of the complaints concern long-distance service, but some consumers also reported unauthorized switching of local telephone service in areas where competition now exists. Complaints about unauthorized service switching were made against dozens of different companies. Many consumers noted that they'd never even heard of these companies until the names appeared on their phone bills.

Some consumers are mystified by how their service was switched, since they contend that they never had any conversation or other contact with the companies. In other cases, consumers said that they believed they were switched as a result of:

- receiving calls from companies claiming to be their regular carriers, or to be affiliated with their regular carriers, offering to consolidate their billings;
- signing up to receive coupons for products such as cigarettes;
- being offered discount plans by companies falsely claiming to be their regular carriers;
- entering car raffles or other contests at malls, county fairs, etc.;

- someone in the household other than the account holder signing a promotional form;
- someone in the household calling a "pay-per-call" number;
- receiving a call from someone supposedly conducting a survey;
- using a calling card to make calls from a hotel phone.

The creativity of slammers is boundless. In one attempted "slam," the consumer said that he was contacted by someone who told him that he had reached his credit limit with his regular carrier and had to switch to another in order to keep making long distance calls. More than one consumer reported service being switched after someone who was purportedly from the FCC called to notify them about "new telephone regulations." In one especially inventive scam, the consumer was lured to call a number in response to an advertisement for doing telemarketing work at home. He later received a notice that his service was switched and that, in addition to his calling charges, he would be assessed a \$10 monthly fee for "tracking" his work.

Consumers report being slammed multiple times -- one man was slammed by the same company seven times. Some also report being billed by the unauthorized carrier for other unwanted services, such as voice mail and paging. Most consumers were unaware that their service had been switched until they received their bills, and some did not realize it until several billing periods had transpired. Even after they thought that they had resolved the problem and gone back to their original carriers, they were slammed again. In fact, some consumers report that by calling the numbers on their bills to dispute the charges, their phone numbers appear to have been captured by Automatic Number Identification, resulting in being signed up for unwanted service from that carrier again!

Adequacy of Current Protections

Line Freezing and Other Special Arrangements

Some consumers who reported unauthorized carrier switching to the NFIC said that they had carrier freezes on the phones, but were slammed anyway. One business owner complained that a phone line set up with his original carrier for access only to local calls was being billed for long distance charges by another carrier without his knowledge or consent.

Difficulty Reaching the "Slammer"

Consumers report having difficulty reaching the companies to which they have been switched. Either there is no answer at the company's number, or the consumer simply gets a recording, or the company hangs up on the caller. Usually, there are no addresses on the bills for the carriers or any billing aggregators that may be involved.

Problems with Proof of Authorization

If the consumer does manage to reach the company and questions the authorization for switching, the proof that is offered is often fabricated. For instance, consumers report that:

- the signature on a written authorization form was forged;
- the claim that someone else at the home or business authorized the switch was false;
- on the date that the company said the switch was authorized, the consumer did not even have service at that number;
- the switch was purportedly authorized by someone who was deceased;
- the taped authorization was not the voice of the account holder;
- if they agreed to switch initially and then canceled, they were switched again without their permission and the original agreement was presented as authorization;

- the taped response to a so-called survey was presented as authorization;
- the person from whom authorization was obtained was not the account holder;
- a signature on a contest entry form or coupon was presented as authorization;
- they received a "negative-option" notice of switching but did not understand that failure to respond constituted authorization.

Sometimes the companies simply refuse to produce any documentation of authorization.

Difficulty Resolving Billing Disputes

In addition to being charged exorbitant amounts, consumers have reported to the NFIC that they were charged for the same time period by more than one company, that they had difficulty getting adjustments for overcharges, and that they were threatened with collection or loss of telephone service for refusal to pay disputed charges. If they already paid the charges, they could not get refunds.

Consumers have also complained about inability to be reinstated in special calling plans or programs by their original carriers, and losing other premiums as a result of unauthorized service switching. In some cases, they also have difficulty getting switched back to their original carriers, and are required to pay switching fees, even though the FCC rules provide that they should be able to switch back at no charge. Furthermore, many of the consumers who contact the NFIC say that when they called their interexchange carriers about charges from unauthorized carriers, they were not informed that they had the right to pay only the amount that their original carriers would have charged. Consumers also have difficulty calculating what the calls should have cost.

Victims of slamming are outraged and frustrated. People rely on their home and business telephone service and they feel strongly that their right to choose their carriers should be

protected. They do not believe that they should be required to spend their time and energy going around in what often seems like endless circles to resolve problems that are not of their making. Obviously, legitimate carriers also suffer from unauthorized switching of their valued customers.

Suggested Changes to FCC Rules

Verification

Based on the consumer complaints that the NFIC has received, it is clear that there are problems with each of the present verification procedures. In light of this and in anticipation of even more competitive pressure as the market for telephone services expands, we believe that stronger measures are needed.

First, the "negative option" notice of carrier switching should be banned. Consumers fail to grasp the fact that this is not just another solicitation. Second, the FCC should develop basic standards for proper verification procedures. The FCC should also consider requiring that consumers be issued PIN numbers by their interexchange carriers when they first obtain telephone service. The FCC should prohibit changing consumers' local or long distance service, no matter what method of verification is used, unless the consumers have provided their PIN numbers to their desired new carriers, who would submit them for confirmation to the interexchange carriers.

To reduce the potential problem of consumers' service being repeatedly switched once their PIN numbers become known, the FCC should require that consumers be given new PIN numbers after changing their service. These could be automatically provided by their interexchange carriers.

We realize that under some circumstances, the submitting carrier and the executing carrier could be the same company. However, if there were abuses, it would be fairly obvious who was culpable.

Furthermore, we believe that the same verification requirements and procedures should apply no matter whether the initial contact with the consumer was an in-bound or outbound call. We are aware of instances in which unauthorized carrier switching resulted from calls that consumers made, and we believe that protection is just as necessary in that case as with inbound calls.

We also believe that it is important to use the term "subscriber" in place of "customer" to clarify that only the individual account holder for that phone number or, if it is a company or organization, its designated representative, can authorize changes in telephone service.

Carrier Freezes

Carrier freezes give consumers the choice of having added protection in regard to their desired phone service. The option to freeze one's service should be freely offered, as long as it is described fairly and accurately. The FCC should set disclosure standards in this regard. We also believe that consumers should be able to freeze both their local or long distance service, and that only the subscribers themselves should be able to lift freezes that they have previously requested if they desire to change their service.

We are concerned about the fact that, despite having carrier freezes in place, some consumers report being slammed. The FCC should require that consumers' carrier freeze requests are honored and levy strong penalties on those who do not honor them.

Liability for Payment

We agree with the National Association of Attorneys General that companies that change consumers' service without authorization should not be able to reap the financial reward for doing so. When consumers have been slammed, not only should any payments that they have already made to the unauthorized carriers be passed back to their original carriers, but the original carriers should then be responsible for refunding to their customers the difference between what they paid and what they should have paid for the calls.

We are not convinced, however, that this would be sufficient to eliminate the economic incentive for carriers to slam or make consumers whole. Consumers will continue to pay for unauthorized services, fearful of termination. And like other fraudulent telemarketing operators, some slammers will undoubtedly fail to abide by the rules, hide their ill-gotten gains in off-shore bank accounts, change their company names, and continue in the same or some other illegal activity. Ultimately, recovery by the consumer or the original carrier may not be possible, or could be greatly delayed.

A stronger incentive is needed, one that puts consumers' interests first. Consumers should have the right to refuse payment for any charges assessed by unauthorized carriers. While some consumers may fraudulently claim that they were slammed to avoid payment, we do not believe that this would be a significant factor. Moreover, the small possibility that consumers would abuse the option to refuse to pay is far outweighed by the damages they suffer from unauthorized carrier switching. At the same time, we believe that making it more difficult for slammers to obtain payment from consumers would greatly reduce the incentive for unauthorized switching.

Dispute Resolution

As the FCC considers how disputes should be resolved between carriers, we suggest that the agency should also focus on how consumers' disputes should be handled. Victims of slamming are very confused about who to contact and what to do. They are often frustrated in their attempts to reach the companies that switched them without their permission. If consumers are given the option of refusing to pay disputed charges, to whom will they be expected to make complaints? Since consumers do not have the addresses of the companies that slammed them and have great difficulty contacting them by phone, how will they be able to show that they have disputed the charges within whatever time period is proscribed?

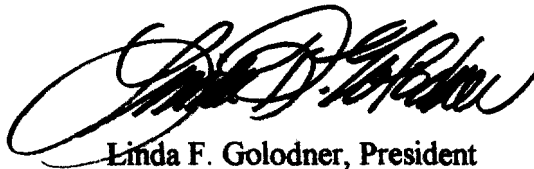
We believe that the entities who contract to bill for the carriers must take responsibility for assisting consumers when they claim that those carriers switched their service without their consent. Those entities should be required to accept consumers' complaints and relay them to the carriers for whom they are billing (if different from themselves). If satisfactory authorization cannot be shown and the consumer continues to dispute the charges, the carrier that assessed them can always pursue the matter through collection or other lawful means.

We also suggest that the FCC develop rules concerning the unfair and deceptive carrier switching practices that we have described. Some carriers have contended that the Federal Trade Commission does not have jurisdiction over them. The FCC must ensure that there are clear "rules of the road" for carrier switching and prohibit practices that put both legitimate carriers and consumers at a tremendous economic disadvantage.

Conclusion

The problem of slamming has reached critical proportions. If the FCC does not act now with sufficient force, the marketplace for local and long distance telecommunications services will be a quagmire instead of the cornucopia that was envisioned as a result of increased competition. NCL urges the FCC to protect the choices that consumers have and will have in the future by including the strong consumer protections we have suggested in the procedures for changing telephone service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Linda F. Golodner", written in a cursive style.

Linda F. Golodner, President

A handwritten signature in black ink, appearing to read "Susan Grant", written in a cursive style.

Susan Grant, Vice President Public Policy
National Consumers League